



FEDERAL TRADE COMMISSION

[File No. X170045]

Electronic Payment Systems, LLC; Analysis of Proposed Consent Order to Aid

Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order – embodied in the consent agreement – that would settle these allegations.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write “Electronic Payment Systems, LLC; File No. X170045” on your comment, and file your comment online at

<https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jody Goodman (202-326-3096),
Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue
NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade
Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby
given that the above-captioned consent agreement containing a consent order to cease and
desist, having been filed with and accepted, subject to final approval, by the Commission,
has been placed on the public record for a period of thirty (30) days. The following
Analysis to Aid Public Comment describes the terms of the consent agreement and the
allegations in the complaint. An electronic copy of the full text of the consent agreement
package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your
comment, we must receive it on or before **[INSERT DATE 30 DAYS AFTER DATE
OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “Electronic Payment
Systems, LLC; File No. X170045” on your comment. Your comment—including your
name and your state—will be placed on the public record of this proceeding, including, to
the extent practicable, on the <https://www.regulations.gov> website.

Due to the COVID-19 pandemic and the agency’s heightened security screening,
postal mail addressed to the Commission will be subject to delay. We strongly encourage
you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Electronic Payment Systems,
LLC; File No. X170045” on your comment and on the envelope, and mail your comment
to the following address: Federal Trade Commission, Office of the Secretary, 600
Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580. If
possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Electronic Payment Systems, LLC, also d/b/a EPS, Electronic Payment Transfer, LLC, also d/b/a EPS, John Dorsey, and Thomas McCann ("EPS").

The Commission has placed the proposed Order on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed Order.

Respondent Electronic Payment Systems, LLC is an independent sales organization ("ISO") that serves as an intermediary between merchants seeking to open credit card merchant accounts and its acquiring bank, which is the bank that has access to the credit card networks. John Dorsey and Thomas McCann are officers and the owners of EPS.

The Commission's proposed Complaint alleges that, in 2012 and 2013, EPS served as the ISO for the entities involved in a deceptive telemarketing scam called Money Now

Funding (“MNF” or “MNF scam”). The FTC sued MNF in 2013 for telemarketing worthless business opportunities to consumers and falsely promising that consumers would earn thousands of dollars in income. The principals of the MNF scam went to great lengths to hide their identities behind many phony businesses. In order to charge consumers’ credit cards but make it difficult to trace the money back to MNF, MNF engaged in a credit card laundering scheme whereby its principals and employees created numerous fictitious companies. Those fictitious companies, through a sales agent, submitted applications for merchant accounts to EPS. With knowledge of the misconduct, EPS then opened merchant accounts in the names of these fictitious companies, and victim credit card charges were processed through those accounts, rather than through a single merchant account in the name of MNF. With similar knowledge, EPS engaged in the underwriting and approval of MNF’s fictitious companies and submitted merchant account applications for these fictitious companies to its acquirer. Using the services of two payment processors, EPS enabled more than \$4.6 million in MNF transactions to be processed through these and other fraudulent merchant accounts.

The Commission’s proposed Complaint alleges that EPS’s conduct regarding the MNF fictitious companies and their merchant accounts constituted an unfair act or practice under Section 5 of the FTC Act and assistance and facilitation of illegal credit card laundering under Section 310.3(b) of the Telemarketing Sales Rule, 16 CFR 310.3(b); see also § 310.3(c) (banning credit card laundering).

The proposed Order contains provisions designed to prevent EPS from engaging in the same or similar acts or practices in the future. Section I of the proposed Order contains prohibitions against engaging in credit card laundering; engaging in tactics to evade fraud monitoring or risk monitoring programs; providing payment processing services to any merchant that is engaged in any act or practice that is, or is likely to be, deceptive or unfair; and providing payment processing services to, or acting as an ISO for, any

merchant that is listed on the MasterCard Member Alert to Control High-Risk Merchants (MATCH) list for several enumerated reasons.

Section II imposes screening requirements that EPS must implement when it screens applications from prospective merchants that fall under the definition of “Additional Review Merchants.” The definition of Additional Review Merchant includes categories of EPS merchants that have been the subject of FTC cases: merchants who engage in outbound telemarketing and merchants selling specific services (debt collection, debt relief, credit-related services, rental housing listings, job listings, or “Money Making Opportunities,” as defined in the order). Heightened screening of Additional Review Merchants includes obtaining detailed information about the merchant’s business, as laid out in the order. EPS would also be required to take reasonable steps to verify the accuracy of the due diligence information it obtains.

Section III requires increased monitoring of Additional Review Merchants. The order requires EPS to investigate merchants whose chargeback rate exceeds 1% and whose total number of chargebacks exceeds 55 per month in two of the preceding six months. Section IV requires monitoring of sales agents and termination of sales agents who are engaged in tactics to conceal credit card laundering.

Sections V through IX are reporting and compliance provisions that allow the Commission to better monitor EPS’s ongoing compliance with the Order. Under Section IX, the Order will expire in twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed Order. It is not intended to constitute an official interpretation of the Complaint or proposed Order, or to modify in any way the proposed Order’s terms.

By direction of the Commission.

April J. Tabor,

Secretary.

